

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 33 OF 2005

Shri Mahadev Sattaram Shivji
Major, 63 of age,
r/o Sircaim, Madhlovado
Bardez-Goa.

... Applicant

versus

State
represented by Public Prosecutor.

... Respondent

Mr. A. D. Bhobe, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the Respondent/State.

CORAM : N. A. BRITTO, J.

DATE : 20TH JANUARY, 2006.

ORAL ORDER

This revision is by the accused who has been convicted and sentenced under Sections 279, 304-A of I.P.C. by the learned J.M.F.C., Mapusa, by Judgment/Order dated 31-1-2001 and whose conviction and sentence has been upheld by the learned Additional Sessions Judge, Panaji by a Judgment/Order dated 6-12-2005.

2. An accident took place at about 17.00 hours at Cuchelim, Mapusa between pick-up No.GA-01-V-0302 driven by the accused and motor-cycle No.GA-01-M-8241 in which the rider of the said motor-cycle Sanjeev B. Sirsat aged about 25 years died instantaneously after receiving head injuries. The accused with his said pick-up was coming from Siolim to Mapusa while the deceased with his said motor-cycle was going in opposite direction, from Mapusa towards Siolim.

3. The death of the deceased was not in dispute as arising in the said accident and indeed the autopsy report which was produced by the prosecution showed that the death was due to cranio cerebral damage(head injury) as a result of blunt force impact. The prosecution had examined six witnesses including PW6/PSI Anant Naik who had recorded the panchanama and filed the complaint. Among the other witnesses examined by the prosecution was PW2/Narayan Agarwadekar who was claimed to be an eye witness to the accident. Both the Courts below have relied on the evidence of the said PW2/Narayan Agarwadekar to come to the conclusion that the accident took place on account of the rash and negligent driving of the said pick-up by the

accused. In fact, the accused did not even explain as to how the accident took place inspite of the fact that the pick-up as well as the motor-cycle were lying at the scene at the time of the scene of offence panchanama.

4. As per the version given by PW2/Narayan Agarwadekar, PW2/Narayan Agarwadekar had seen the accident as he was proceeding on his scooter and the said pick-up after overtaking him had gone ahead and had given a dash to the oncoming motor-cycle driven by the deceased. PW2/Narayan Agarwadekar had stated that he had heard the noise of the accident as well as had personally seen the said pick-up driven by the accused when it gave a dash to the said motor-cycle driven by the accused. There is no doubt that PW2/Narayan Agarwadekar had stated that the distance between the pick-up and his motor-cycle was about 7 to 8 metres, and, it has been submitted on behalf of the accused by Mr. A. D. Bhole, the learned Counsel, that in case PW2/Narayan Agarwadekar was at that distance of 7 to 8 metres behind the said pick-up driven by the accused at the time when the pick-up gave a dash to the oncoming motor-cycle then it would have been difficult for

PW2/Narayan Agarwadekar to have even stopped his motor-cycle without dashing the same against the said pick-up. In fact, PW2/Narayan Agarwadekar was not at all questioned as to how he could stop his motor-cycle in case he was behind the pick-up at a distance of about 7 to 8 metres at the time of impact and in the absence of such cross-examination it cannot be said that PW2/Narayan Agarwadekar was not driving behind the pick-up when the accident took place, as stated by him. The distance given by him as 7 to 8 metres must have been by approximation and need not be considered by mathematical precision. There was also sufficient distance on the left of the pick-up as well which could permit him to take his motor-cycle to the left and stop. It is to be noted that it is the accused who was fast while he/P.W.2/Narayan Agarwadekar was slow. PW2/Narayan Agarwadekar had stated that he was going along with a pillion rider by name Peter Campos and the said Peter Campos was not examined in the trial. The records show that summons to the said Peter Campos were issued but the same were returned as it was informed that the said Peter Campos had proceeded abroad. On behalf of the accused not a single question was asked to PW6/Anant Naik as regards the non examination of the said

Peter Campos. The learned first appellate Court has rightly refused to draw adverse inference for non examination of the said Peter Campos but for a different reason. The fact that he was not available could be another reason why no adverse inference could be drawn for non examination of the said Peter Campos. The case of the prosecution was sufficiently supported by the evidence of PW2/Narayan Agarwadekar and other circumstances. The evidence of PW2/Narayan Agarwadekar clearly shows that the accused with his pick-up overtook him and in that process went more towards the right and dashed against the oncoming motor-cycle of the deceased and in that both the Courts below have rightly held that the accused was rash and negligent in driving the said pick-up. The pick-up of the accused, therefore, is seen more towards the right of the said road on his way from Siolim to Mapusa, on the sketch produced. It can be seen that there was a clear space towards the left of the said pick-up to the extent of about 6 feet and 6 inches or so. The impact was on the front right side of the bumper of the said pick-up which again shows that the pick-up did not even attempt to save the oncoming motorcyclist. The fact that the damage suffered by the motor-cycle, as reflected in the report of the

Motor Vehicle Inspector, is more than that found on the right hand side bumper of the pick-up is no evidence in itself to conclude that it is the motorcyclist/deceased who was coming in a fast speed. In my view, considering the evidence of PW2/Narayan Agarwadekar and other circumstantial evidence produced, the conclusions drawn by both the Courts could not be faulted.

5. It appears that before the learned first appellate Court the accused had made an effort to obtain the benefit of probation under the Probation of Offenders Act, 1958 but the said effort was not favoured by the learned first appellate Court and this was by placing reliance on the case of **Dalbir Singh v. State of Haryana and others**(AIR 2000 SC 1677). Now on behalf of the accused, Mr. Bhohe has submitted that the accused is 63 years old and is suffering from high diabetes and partial blindness as well as pain in the joints and, therefore, requires constant medical aid and constant assistance of a person to do his day to day activities. Mr. Bhohe has further submitted that considering that the accident had taken place way back in the year 1992 this is a fit case to show indulgence in the matter and

reduce the punishment of imprisonment by imposing fine only, also considering that earlier, after the arrest of the accused, the accused was in custody for about 5 days. Alternatively, Mr. Bhobe has submitted that the sentence be reduced to the period already undergone by the accused and in addition fine be imposed. On behalf of the accused, medical certificates dated 19-1-2006 have been filed to show that the accused is suffering from diabetes and hypertension.

6. On the other hand, Ms. W. Coutinho, the learned Public Prosecutor has submitted that on account of the rashness on the part of the accused death was caused of the rider of the said motor-cycle at a young age of 25 years and being so there is no scope for reduction of sentence.

7. The learned J.M.F.C. has sentenced the accused under Section 279 to undergo one month S.I. and to pay a fine of Rs.500/-, in default to undergo 45 days S.I. Likewise, the accused is sentenced under Section 304-A to three months S.I. and to pay a fine of Rs.2000/- and in default to undergo six months S.I. and, as per the Order both the sentences are to run

concurrently. The learned J.M.F.C. has ordered the amount of fine, if realised, to be paid to the heirs of the deceased Sanjeev B. Sirsat.

8. The Judgment of the first appellate Court was delivered on 6-12-2005 and it appears that at that time the only effort made by the accused was for his release on probation under the Probation of Offenders Act, 1958. No medical history was placed before the first appellate Court. The learned first appellate Court after placing reliance on the case of **Dalbir Singh v. State of Haryana and others** (supra) observed that the benefit of probation ought not to be extended to a person who is convicted of offence of causing death by rash and negligent driving. Indeed the Apex Court in the said case of **Dalbir Singh v. State of Haryana and others**(supra) had observed that bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting victims and their families, Criminal Courts cannot treat the nature of the offence under Section 304-A, I.P.C. as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. The Apex Court had further observed that while considering the

quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

9. Ms. W. Coutinho, the learned Public Prosecutor has

placed reliance on the case of **Adu Ram v. Mukna and others** (2004 AIR SCW 5773) wherein the Apex Court has, inter alia, observed that imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system(emphasis supplied). Reliance has also been placed by the learned Public Prosecutor on the case of **Union of India v. Kuldeep Singh** ((2004) 2 SCC 590). It is well settled that a sentence to be imposed must always be commensurate with the crime committed by the accused, though, there is no golden scale or strait jacket formula to determine the same as to which exact punishment will fit a particular crime. The ailments which the accused is shown to be suffering from, based on the medical certificate issued by Dr. Dhumaskar, apart from the fact that such ailments were not placed before the Court of Sessions, when it upheld the sentence on 6-12-2005 have been shown only on medical certificate issued just yesterday. In my view, these

ailments are not sufficient to call for a reduction of sentence. There is nothing which is unusual about the said ailments which today a large number of population suffers from and they can be adequately looked after or taken care of, even while undergoing a sentence of imprisonment. In two of the decisions cited herein above, the Hon'ble Supreme Court has highlighted the aspect of deterrence. It is common knowledge that deaths on the road are ever increasing and the deceased Sanjeev B. Sirsat was a victim and at a young age of 25 years. If deterrence is to carry its real meaning than in my view, there is no scope for the reduction of the sentence imposed upon the accused.

10. Consequently, the Criminal Revision Application is hereby dismissed.

N. A. BRITTO, J.

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